H.S. Gravure of Leominster, Inc. *and* **Local 553 of The International Chemical Workers Union, AFL-CIO.** Case 1-CA-18267

July 21, 1981

DECISION AND ORDER

Upon a charge filed on January 28, 1981, and amended on March 3, 1981, by Local 553 of the International Chemical Workers Union, AFL-CIO, herein called the Union, and duly served on H.S. Gravure of Leominster, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 1, issued a complaint on March 9, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

On May 4, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, based upon Respondent's failure to file an answer to the complaint as required by Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended. Subsequently, on May 19, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent failed to file a response to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically states that, unless an answer to the complaint is filed by Respondent within 10 days from the service thereof, "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board."

To date, neither an answer to the complaint nor a response to the Notice To Show Cause has been filed by Respondent. No good cause to the contrary having been shown, the allegations of the complaint herein are deemed to be admitted and are so found by the Board. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Massachusetts corporation, at all times material herein has maintained its principal office and place of business at 218 Willard Street, Leominster, Massachusetts, where it had been engaged in the engraving of paper and related work. Prior to June 1, 1980, it annually performed services at its Leominster plant valued in excess of $50,000 for customers located outside the Commonwealth of Massachusetts. Prior to June 1, 1980, it annually purchased and received at its Leominster plant products, goods, and materials valued in excess of $50,000 directly from points located outside said Commonwealth.

We find on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Local 553 of the International Chemical Workers Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The following employees of Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All production, shipping and maintenance employees and truck drivers of Respondent employed at its Leominster, Massachusetts plant exclusive of all office clerical employees, lab technicians, salesmen, professional employees,

foremen, guards and all supervisors as defined in Section 2(11) of the Act.

At all times material herein, the Union has been the designated exclusive bargaining representative of Respondent's employees in the unit described above, and at all times material herein the Union has been recognized as such representative by Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from October 14, 1978, to October 13, 1979.

Since prior to June 1980, Respondent unilaterally has changed existing terms and conditions of employment of the unit employees by failing to make certain contributions to a pension fund.

Further, in or about June 1980, Respondent closed its Leominster plant. Thereafter, on or about August 14, 1980, and September 6, 1980, the Union requested Respondent to negotiate concerning the effects of Respondent's closing the Leominster plant on unit employees, including, *inter alia*, the effects of said closing on pension benefits. In spite of this request, since on or about August 14, 1980, Respondent has failed and refused to negotiate with the Union concerning said subject.

Accordingly, we find that, by the aforesaid conduct, Respondent has (1) since prior to June 1980 unilaterally changed the terms and conditions of employment of the unit employees without bargaining with the Union, and (2) since on or about August 14, 1980, refused to bargain with the Union as the exclusive representative of the employees in the appropriate bargaining unit concerning the effects of its closing the Leominster plant on unit employees. By such actions, we conclude that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow commerce.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

As a result of Respondent's unlawful failure to bargain about the effects of its cessation of operations, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when Respondent might still have been in need of their services, and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require Respondent to bargain with the Union concerning the effects of the closing of its operations on its employees, and shall include in our Order a limited backpay requirement[1] designed both to make whole the employees for losses suffered as a result of the violation and to recreate in some practicable manner a situation in which the parties' bargaining is not entirely devoid of economic consequences for Respondent. We shall do so in this case by requiring Respondent to pay backpay to its employees in a manner similar to that required in *Transmarine*.[2] Thus, Respondent shall pay employees backpay at the rate of their normal wages when last in Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of Respondent's operations on its employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision and Order, or to commence negotiations within 5 days of Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum to any of these employees exceed the amount he or she would have earned as wages from in or about June 1980, the date on which Respondent terminated its operations, to the time he or she secured equivalent employment elsewhere, or the date on which Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in Re-

[1] We have indicated that backpay orders are appropriate means of remedying 8(a)(5) violations of the type involved herein, even where such violations are unaccompanied by a discriminatory shutdown of operations. Cf. *Royal Plating and Polishing Co., Inc.*, 148 NLRB 545, 548 (1964), and cases cited therein.

[2] *Transmarine Navigation Corporation and its Subsidiary, International Terminals, Inc.*, 170 NLRB 389 (1968).

spondent's employ.[3] Interest on all such sums shall be paid in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

To further effectuate the policies of the Act, Respondent shall be required to establish a preferential hiring list of all terminated unit employees following a nondiscriminatory system, such as seniority, and, if Respondent ever resumes operations anywhere in the Leominster, Massachusetts, area, it shall be required to offer these employees reinstatement. If, however, Respondent were to resume its Leominster operation, Respondent shall be required to offer unit employees reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions.[4]

We have also found that Respondent failed to make required contributions to a pension fund since sometime prior to June 1980. In order to dissipate the effect of this unfair labor practice, we shall order Respondent to make whole its employees by transmitting the required contributions to this fund. Further, we shall order Respondent to reimburse any employees for contributions they themselves may have made for the maintenance of the pension fund after Respondent unlawfully ceased contributing to this fund.[5]

Furthermore, in view of the fact that Respondent is no longer in operation and its former employees may be in different locations, we shall order Respondent to mail to each of its employees employed on the date it ceased operations copies of the attached notice signed by Respondent.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. H.S. Gravure of Leominster, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 553 of the International Chemical Workers Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing to bargain about the effects of the closing of its Leominster plant on its bargaining unit employees, Respondent has violated Section 8(a)(5) and (1) of the Act.

4. By unilaterally changing existing terms and conditions of employment by failing to make required contributions to a pension fund since prior to June 1980, Respondent has violated Section 8(a)(5) and (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, H.S. Gravure of Leominster, Inc., Leominster, Massachusetts, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain with Local 553 of the International Chemical Workers Union, AFL-CIO, herein called the Union, as the exclusive representative of its employees in the appropriate unit set forth herein below with respect to the effect on its unit employees of its decision to close its Leominster facility. The appropriate unit is:

> All production, shipping and maintenance employees and truck drivers of Respondent employed at its Leominster, Massachusetts plant exclusive of all office clerical employees, lab technicians, salesmen, professional employees, foremen, guards and all supervisors as defined in Section 2(11) of the Act.

(b) Unilaterally changing existing terms and conditions of employment by failing and refusing to make contributions to a pension fund.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action which is designed to effectuate the policies of the Act:

(a) Upon request, bargain in good faith with the Union as the exclusive bargaining representative of all employees in the aforesaid appropriate unit with respect to the effects on its employees of its decision to terminate its operations and, if any understanding is reached, embody it in a signed agreement.

(b) Place the names of all unit employees terminated in or about June 1980 on a preferential hiring list and, if operations are ever resumed anywhere in the Leominster, Massachusetts, area, offer rein-

[3] *Transmarine Navigation Corporation, supra.*

[4] *Drapery Manufacturing Co., Inc., and American White Goods Company*, 170 NLRB 1706 (1968).

[5] See *Ferro Mechanical Corp.*, 249 NLRB 669, 671 (1980).

Because the provisions of employee pension fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question whether Respondent must pay any additional amounts into the pension fund in order to satisfy our "make-whole" remedy. These additional amounts may be determined, depending upon the circumstances of each case, by reference to provisions in the document governing the fund, and, where there is no governing provision, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of the fund withheld, additional administrative costs, etc., but not collateral losses.

statement to those employees. If, however, Respondent were to resume its operations at the Leominster, Massachusetts, facility, it shall offer all those in the appropriate unit reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions.

(c) Pay the terminated employees their normal wages for the period set forth in the remedy section of this Decision.

(d) Make whole the employees in the appropriate unit by transmitting the contributions owed to the pension fund since prior to June 1980. This shall include reimbursing employees for contributions they themselves may have made for the maintenance of the pension fund after Respondent unlawfully ceased contributing.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful in checking compliance with this Order.

(f) Mail an exact copy of the attached notice marked "Appendix"[6] to Local 553 of the International Chemical Workers Union, AFL-CIO, and to all employees who were employed at its former place of business at 218 Willard Street, Leominster, Massachusetts, immediately prior to Respondent's cessation of operations in or about June 1980. Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by Respondent's authorized representative, shall be mailed immediately upon receipt thereof, as hereinbefore directed.

(g) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[6] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of The National Labor Relations Board" shall read "Posted Pursuant to a Judgment of The United States Court of Appeals Enforcing an Order of The National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT fail and refuse to bargain with Local 553 of the International Chemical Workers Union, AFL-CIO, concerning the effects of our decision to close our Leominster, Massachusetts, facility on the employees in the bargaining unit described below.

WE WILL NOT unilaterally change existing terms and conditions of employment by failing and refusing to make contributions to a pension fund.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them under Section 7 of the Act.

WE WILL, upon request, bargain collectively with Local 553 of the International Chemical Workers Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below, concerning the effects of our decision to close our Leominster, Massachusetts, facility on unit employees, and reduce to writing any agreement reached as a result of such bargaining.

WE WILL place the names of all unit employees laid off in or about June 1980, when we closed our facility, on a preferential hiring list and, if we resume operations anywhere in the Leominster area, we shall offer these employees reinstatement. If, however, we resume our operations at the Leominster facility, these employees shall be offered reinstatement to their former or, if such positions no longer exist, to substantially equivalent positions.

WE WILL pay the employees who were employed at the above facility their normal wages for a period specified by the National Labor Relations Board, plus interest.

WE WILL make whole our employees in the appropriate unit by transmitting our contributions to the pension fund due since prior to June 1980. This shall include reimbursing our employees for contributions they themselves may have made for the maintenance of the pension fund after we unlawfully ceased contributing. The bargaining unit is:

> All production, shipping and maintenance employees and truck drivers who were employed at our Leominster, Massachusetts plant exclusive of all office clerical employees, lab technicians, salesmen, professional employees, foremen, guards and all supervisors as defined in Section 2(11) of the Act.

H.S. GRAVURE OF LEOMINSTER, INC.